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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 449

SHELL OIL COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION

No. 459

HUMBLE OIL & REFINING COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL POWER COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinions of the Court of Appeals in the *Shell* case (S.[1] Pet. App. 18–44; H. Pet. App. 15a–19a) and

[1] "S. Pet. App." refers to the Appendix to the *Shell* petition and "H. Pet. App." to the Appendix to the *Humble* petition. In addition, since there is a consolidated record plus separate supplemental records in each case, C. R., S. R. and H. R. will be used to refer to the consolidated record, the *Shell* supplemental record, and the *Humble* supplemental record, respectively.

in the *Humble* case (H. Pet. App. 2a–3a, 20a–40a) are not yet reported.[2] The single opinion and order of the Federal Power Commission affirming the Examiner's decision in both cases is set out at H. Pet. App. 41a–75a.

JURISDICTION

The judgment of the Court of Appeals in each case was entered on June 29, 1957. The petition for a writ of certiorari in *Shell* was filed on September 11, 1957, and in *Humble* on September 13, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1) and Section 19 (b) of the Natural Gas Act, 15 U. S. C. 717r (b).

QUESTIONS PRESENTED

1. Whether sales of natural gas in interstate commerce for resale, made prior to the completion of gathering, are subject to regulation by the Federal Power Commission under the Natural Gas Act.

2. Whether, if the first question is answered in the affirmative, the sales made by petitioners in the particular circumstances of these cases constitute such regulable sales.

STATUTE INVOLVED

Section 1 (b) of the Natural Gas Act of June 21, 1938, 52 Stat. 821, 15 U. S. C. 717 (b), provides:

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[2] Also relevant here but not yet reported is the opinion of the Court of Appeals in *Deep South Oil Company of Texas* v. *Federal Power Commission*, which was decided with *Shell* and *Humble* and constitutes the principal opinion in the three cases. The majority opinion in *Deep South* is set out at S. Pet. App. 45–57 and at H. Pet. App. 3a–15a. Judge Brown wrote a single dissenting opinion in all three cases (S. Pet. App. 23–44; H. Pet. App. 19a–40a). A petition for a writ of certiorari has not been filed in the *Deep South* case.

(b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

STATEMENT

The Shell Oil Company on November 5, 1954, and Humble Oil & Refining Company on November 26, 1954, filed with the Federal Power Commission petitions, pursuant to Section 1.7 (c) of the Commission's Rules of Practice and Procedure, each praying for an order to remove uncertainty as to its status and declaring that its sales of gas as described in its petition are not subject to regulation under the Natural Gas Act and that it was, therefore, not a "natural-gas company" within the Act by virtue of such sales.[2a] These petitions were consolidated for hearing with the similar petition filed by Deep South Oil Company of Texas.

The Presiding Examiner, after extensive hearings, issued a single decision relating to all three companies in which he held that each of the companies, Shell,

[2a] Section 2 (6) of the Act defines "natural-gas company" as "a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."

Humble and Deep South, was making sales of natural gas in interstate commerce for resale; that these sales, although consummated prior to the completion of gathering, were not exempt from Commission regulation by virtue of the exception contained in Section 1 (b) of the Gas Act for "the production or gathering of natural gas"; and consequently that each company was a "natural-gas company" subject to Commission regulation under the Act (C. R. 130–191). After considering the companies' exceptions and oral argument, the Commission affirmed the Presiding Examiner's decision (C. R. 340–357; H. Pet. App. 41a–54a). Each company sought review in the Court of Appeals for the Fifth Circuit and that court affirmed (S. Pet. App. 18–22; H. Pet. App. 2a–3a).

The pertinent facts may be summarized as follows:

Shell.—Shell Oil Company is engaged in the business of exploring for, producing, refining and marketing petroleum and petroleum products. In its Texas operations, Shell produces and sells casinghead gas,[3] at or near the wellhead, from nineteen oil wells in the McElroy Field and nine oil wells in the Nome field. It also sells "gas well gas" from one well in the latter field (C. R. 147–148, 151–152).

When the McElroy gas comes out of the wells, it goes into flow lines which connect to a single separator located on the Shell lease area (C. R. 148; S. R. 7). In the separator, the crude oil and free water are

[3] Casinghead gas is gas that is produced along with oil from an oil well. It may be either "solution gas" which is in solution in the oil in the reservoir or "cap gas" which overlies the oil producing horizon (C. R. 136).

separated from the gas, with the latter passing out of the top of the separator into a small vent line which connects with a 4-inch line of Phillips Petroleum Company, the purchaser of the gas, a few feet from the separator (S. R. I 7–8). At this point, which is still on Shell's lease, the gas is delivered, and title passes to Phillips pursuant to a contract entered into on May 7, 1936, between Phillips' and Shell's assignor under which Shell is to receive 50% of the net proceeds from the sale of the gas (S. R. I 8–10, II, Ex. 2).[4]

From the point of delivery by Shell, the gas flows through a small lateral line belonging to Phillips for a distance of about 1,500 feet, where it enters one of Phillips' main gathering lines (S. R. I 8). There, commingled with gas from other wells, the gas from Shell's wells flows to the inlet of Phillips' Crane Plant (S. R. I, 24; II, Exs. 1, 11).[5] At the Crane Plant, the commingled gas is first run through scrubbers to remove water and small amounts of crude oil; then it is compressed and sent through absorbers in which the liquefiable carbons are removed from the gas (S. R. I 25–26). While part of the gas which remains

[4] At the point of delivery, the gas contains methane, ethane, liquefiable hydrocarbons (natural gasoline, butane and propane) and an unusually large quantity of hydrogen sulfide (S. R. I 8–9). Methane and ethane are the principal constituents of natural gas as used for industrial or domestic fuel (C. R. 137).

[5] The Crane Plant of Phillips, which is about five or six miles from Shell's McElroy lease, is served by four main gathering lines which bring to the plant 33 to 34 million cubic feet of gas per day from 897 wells in the McElroy field. Of this amount, approximately 500,000 cubic feet a day comes from the Shell wells (C. R. 150; S. R. I 23, 24, 29).

after this processing is used for plant and lease fuel, the greater portion of it is delivered near the outlet side of the Crane plant to El Paso Natural Gas Company, a pipeline company, under a contract entered into between Phillips and El Paso in 1950 (S. R. I 26, 29).[6] El Paso then removes the hydrogen sulphide, carbon dioxide and remaining moisture, compresses the gas, and delivers it into one of its transmission lines for transportation to and resale in other states (S. R. I 26–27).

Shell sells its Nome gas to Texas Gas Pipe Line Corporation under a contract entered into on October 15, 1954 (S. R. II, Ex. 9). Shell delivers the casinghead gas at the outlet valve of its field separators and the gas well gas at the wellhead (S. R. I, 41, 44; II Ex. 8). The Pipe Line Corporation transmits the gas to its main gathering lines, where it is commingled with other gas and transmitted to the Winnie processing plant, owned by the Pipe Line Corporation's parent, in the Nome field (S. R. I 47–48). At the Winnie plant, the gas is processed for the removal of water vapor and liquefiable hydrocarbons and thereafter redelivered to the Pipe Line Corporation, which resells part in interstate commerce to Transcontinental Gas Pipe Line Company, and some for local use in Texas (S. R. I 46–47, II Ex. 6).

Humble.—Humble, an independent producer of natural gas in various fields in Texas and New Mexico,

[6] Prior to 1950, Phillips vented or flared the residue gas. It may be noted that the Phillips-El Paso sale is among those involved in *Phillips Petroleum Company* v. *Wisconsin*, 347 U. S. 672. See 10 F. P. C. 246, 260.

sells casinghead gas under forty-eight contracts. Thirty-six of these contracts are on a standard form of casinghead gas contract;[7] under these contracts, Humble sells gas to Phillips Petroleum Company and 12 other processors in 20 fields (in one New Mexico and fifteen Texas counties) and, in return, Humble receives a portion of the net proceeds from the processors' sales of the residue gas and of the liquefied products recovered and saved from the raw gas (C. R. 153–154; H. R. 21). Under eight of the remaining contracts (also on a standard form of casinghead gas contract, slightly amended),[8] Humble sells to El Paso Natural Gas Company, a natural-gas company under the Act, gas produced by it in Lea County, New Mexico, and in two counties in Texas; for this casinghead gas, the amount paid to Humble is related to the sales price of gasoline, as stated in the contract, plus certain flat prices for the residue gas (C. R. 154; H. R. 28–29). The remaining four sales of gas (one to Phillips Petroleum Company, two to the Texas Company, and one to Standard Oil and Gas Company) are in the Stowell and Hastings fields in Texas; these sales are made by Humble under what is described as "Division Orders"[9] under

[7] "Standard Form Revised-Adopted by the Natural Gasoline Association of America, November 7, 1932."

[8] "Standard Form 1939—an exact reproduction of the form formerly sponsored by the Natural Gasoline Association of America" (C. R. 154).

[9] A Division Order shows the division of ownership both as to the working and royalty interests and gives the lease operator the right to purchase the gas and use it or sell it to someone else for the account of the joint owners. It differs from a contract in that an order is subject to revocation at the will of the joint owners (C. R. 155).

which Humble receives payment for the gas on the same basis as the plant operator receives payment for his own casinghead gas (C. R. 154; H. R. 32).

Under each of these forty-eight contracts, Humble delivers gas at the outlet side of a separator, which is on or near the lease (H. R. 7; C. R. 154). In all but two instances, title to the gas passes to the purchaser at the separator; in the two instances, title passes on adjoining leases, not very far away (C. R. 154–155). In each instance, after the gas is delivered to the purchaser, it goes into a gathering system, where, commingled with gas from other wells, it moves to a processing plant for removal of impurities and the heavier liquefiable hydrocarbons (H. R. 10–12). From the processing plant, the gas may be returned to the lease for lease operations, or be sold for local or out-of-state use; in each instance, however, some or all of the gas is delivered to the lines of a pipeline company which transports it across state lines for resale and consumption (H. R. 23–26).

Decisions Below.—Before the Presiding Examiner, petitioners urged that their sales are excluded from regulation under the Natural Gas Act by virtue of Section 1 (b)'s exemption for the "production or gathering" of natural gas. They also claimed that the gas they sold the processing plant operators was not the same product as the residue gas later sold by the plant operators to the interstate pipeline company and, in any case, not "natural gas" as defined in the Act. In addition, they argued that their sales were not "sales for resale" but for manufacture, and

finally that their sales were not sales "in interstate commerce" (C. R. 157).

The Presiding Examiner, after hearing the evidence and considering briefs, held against petitioners on all counts. First, he ruled that under this Court's decision in *Phillips Petroleum Company* v. *Wisconsin,* 347 U. S. 672, sales of natural gas at the well-head, such as those made by petitioners, were not within the "production or gathering" exemption but rather within Section 1 (b)'s affirmative grant of jurisdiction over the "sale in interstate commerce of natural gas for resale" (C. R. 158–165). Second, pointing out that the gas sold by petitioners consisted largely of ethane and methane, which constituted the bulk of the fuel gas sold and used by the ultimate consumers—with the sole function of the processing being to extract and remove certain impurities and other hydrocarbons—the Presiding Examiner held that the gas sold by petitioners to the processing plant operators is "natural gas" under the Act (C. R. 165–170).

As for petitioners' claim that their sales were not for "resale," but for manufacture, the Presiding Examiner noted that, while the contracts do not expressly provide for the resale of the gas, they do not prohibit resale and the pricing formulae usually are geared to, and contemplate, resale of the gas (C. R. 170–179). Finally, the Presiding Examiner held that, on the facts, the flow of gas from the well-head through the processing plant into the interstate transmission lines was continuous and uninterrupted, and that, while some of the gas from the processing plants was

used or sold locally, substantial volumes were transported in interstate commerce. Accordingly, the Presiding Examiner ruled that petitioners' sales were in interstate commerce (C. R. 179–190).

The Commission affirmed the Presiding Examiner's opinion in all respects (C. R. 340–385). The Commission held that petitioners' gas was natural gas within the Act (C. R. 343–344); that, on the record, there was a continuous flow of natural gas from petitioners' wells across state lines, uninterrupted by processing in the processing plants (C. R. 344–348); that the sales were not for manufacture, but for resale (C. R. 349); and that consequently, under the *Phillips* case, petitioners' sales were not within the exemption of "production or gathering" but rather within Section 1 (b)'s affirmative grant of jurisdiction (C. R. 350–357).[10]

ARGUMENT

1. Petitioners' primary contention is that their sales of gas at or near the wellhead are not subject to regulation under the Natural Gas Act because these sales are made prior to the completion of production and gathering. According to petitioners, *Phillips Petroleum Co.* v. *Wisconsin,* 347 U. S. 672, does not hold to

[10] Commissioner Digby dissented in part, being unable to agree that "the Natural Gas Act applies to *all* sales of natural gas, whether to an interstate pipeline company or not, and whether occurring before, during, or after production or gathering has been completed, solely because some or all of the gas ultimately is transported in interstate commerce or sold in interstate commerce for resale by an interstate pipeline company." (C. R. 357–358.) He would hold Humble's sales and those by Shell from the McElroy field not subject to the Commission's jurisdiction (C. R. 373–380).

the contrary, since the sales involved there were made after the completion of production and gathering. Viewing the issue here as still at large, they undertake to show that, in enacting the Gas Act in 1938, Congress intended that such sales be exempt from federal regulation under Section 1 (b)'s exception for "the production or gathering of natural gas."

(*a*) But, as we read *Phillips,* this Court clearly ruled that *all* sales of natural gas in interstate commerce for resale are subject to Commission regulation under the Act. While the sales involved in *Phillips* happened to be made after the completion of gathering, the Court's decision did not turn on that fact. Rather, the Court based its ruling on the broader ground that the Act covered "all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company" (347 U. S. at 682).

That the *Phillips* holding was based on this broader ground is, we believe, manifest throughout the opinion. In discussing its earlier holding in *Interstate Natural Gas Co. v. Federal Power Commission,* 331 U. S. 682, where Interstate had produced or purchased natural gas which it in turn sold and delivered to three interstate pipeline companies, the Court not only reaffirmed its prior ruling that " '[e]xceptions to the primary grant of jurisdiction in the section [1(b)] are to be strictly construed' *id.,* at 690–691" (347 U. S. at 679), but it deliberately refused to distinguish *Interstate* on the proffered ground that that company "transported the gas in its pipelines after

completion of gathering and before sale, and that the Interstate Company was affiliated with an interstate pipeline company and therefore subject to Commission jurisdiction in any event" (347 U. S. at 680). In *Phillips,* the Court stated with respect to *Interstate* (*id.* at 680–681):

> * * * This Court, however, refused to rely on such refinements and instead based its decision in *Interstate* on the broader ground that sales in interstate commerce for resale by producers to interstate pipeline companies do not come within the "production or gathering" exception.

Similarly, in dealing with the Act's legislative history, the Court pointed out that wholesale sales generally, not merely those made after the completion of gathering or by pipeline companies, were within the "gap" which the Natural Gas Act was intended to plug (*id.* at 683–684):

> * * * A significant part of this gap was created by cases holding that "the regulation of wholesale rates of gas and electrical energy moving in interstate commerce is beyond the constitutional power of the States." *Interstate Natural Gas Co.* v. *Federal Power Commission, supra,* at 689. The committee reports on the bill that became the Natural Gas Act specifically referred to two of these cases and to the necessity of federal regulation to occupy the hiatus created by them. Thus, we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission systems.

And, as if to remove any doubt, the Court concluded by recognizing that the effect of its holding would be

to subject to Commission regulation sales of natural gas in interstate commerce for resale by independent producers, such as petitioners' sales (*id.* at 685):

> Regulation of the sales in interstate commerce for resale made by a so-called independent natural-gas producer is not essentially different from regulation of such sales when made by an affiliate of an interstate pipeline company. In both cases, the rates charged may have a direct and substantial effect on the price paid by the ultimate consumers. Protection of consumers against exploitation at the hands of natural-gas companies was the primary aim of the Natural Gas Act. *Federal Power Commission* v. *Hope Natural Gas Co., supra,* at 610. Attempts to weaken this protection by amendatory legislation exempting independent natural-gas producers from federal regulation have repeatedly failed, and we refuse to achieve the same result by a strained interpretation of the existing statutory language.

See also *Natural Gas Pipeline Co.* v. *Panoma Corporation,* 349 U. S. 44, reversing, 271 P. 2d 354 (Okla.) and 272 P. 2d 425 (Okla.); *Northern Natural Gas Company* v. *Federal Power Commission,* 206 F. 2d 690 (C. A. 8), certiorari denied, 346 U. S. 922, rehearing denied, 347 U. S. 1022; cf. *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission of Indiana,* 332 U. S. 507, 513–517.[11]

[11] Contrary to Humble's contention, the holding below is not in conflict with *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U. S. 498 (H. Pet. 21). That case involved the question whether the Commission's jurisdiction under the Act extended to sales of *gas leases, i. e.*, properties containing natural gas still in the ground and not yet reduced

(*b*) That the Court has noted probable jurisdiction in *Cities Service Gas Company* v. *State Corporation Commission of Kansas*, 180 Kan. 454, No. 85, this Term, 353 U. S. 971, does not indicate that the Court should likewise grant the instant petitions. In *Cities Service*, the Kansas Supreme Court sustained an order of the Kansas Commission requiring all takers of gas from the Hugoton field in Kansas to attribute a value of 11 cents per Mcf. to the gas taken, regardless of where the initial sale is made (whether at the well-head or after the completion of production and gathering) or of the ultimate destination of the gas (local or out-of-state). Such a holding plainly ignores the rulings of this Court in *Phillips*, *supra*, and *Panoma*, *supra*. Here, on the other hand, the holding below is in full accord with this Court's prior decisions and there is no occasion for further review.

2. Similarly without merit and unworthy of review by this Court, are petitioners' subsidiary contentions (*a*) that their sales are not of "natural gas," (*b*) that they are not "in interstate commerce," and (*c*) that they were not for resale, but rather for manufacture.

(*a*) There can be little doubt that the gas sold by petitioner is "natural gas" within the meaning of the Natural Gas Act. Not only does the Act define

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to physical possession. The Court, in holding that such gas-producing properties were excluded from Commission regulation under the exemption for "the production or gathering of natural gas," did not, as Humble impliedly recognizes (H. Pet. 12), undertake to pass on the very different question involved here, *i. e.*, whether sales of natural gas in interstate commerce for resale, after the gas has been taken out of the ground and reduced to physical possession, are subject to the Act.

"natural gas" broadly as meaning "either natural gas unmixed, or any mixture of natural gas and artificial gas" (Section 2(5)), but there is no sharp line of distinction in theory or practice between casinghead gas and natural gas; indeed, the term "natural gas" is frequently used generically to include casinghead gas.[12] The only difference between casinghead gas, as it comes out of the well, and natural gas, as it is transmitted in interstate commerce, is that the former contains, in addition to methane and ethane which constitutes the bulk of the transmitted natural gas, other and heavier hydrocarbons as well as impurities. The removal of these does not operate to change the gas into something new and different; the gas as it comes from the well is natural gas, and remains such through processing and delivery to the ultimate consumers. Cf. *Natural Gas Pipe Line Co. of America* v. *Panoma Corp.*, 271 P. 2d 354, 361 (Okla.),[13] reversed on other

[12] "Natural gas" is defined in Webster's *New International Dictionary*, 2d Ed. (unabridged) as:

> A gas issuing from the earth's crust through natural openings or bored wells and frequently accompanied by petroleum. * * * When combustible its consists chiefly of methane with small and variable amounts of ethane, propane, butane, hydrogen, oxides of carbon, nitrogen, helium, hydrogen sulphide, etc. * * *

[13] The Oklahoma Supreme Court commented in regard to a comparable contention (271 P. 2d at 361):

> There was some contention on the part of Natural that it did not take "natural gas" from the structures and formations of the Guymon-Hugoton field because the gas it finally took and paid for was not in fact "natural gas." This contention was based on the facts above set out. No authority is cited to sustain the conclusion that natural gas produced from the earth and transported to consumers who

grounds, 349 U. S. 44; *Mississippi River Fuel Corp.* v. *Federal Power Commission,* 121 F. 2d 159, 164 (C. A. 8); *Carbide & Carbon Chemicals Corp.* v. *Texas Co.,* 21 F. 2d 199, 201 (S. D. Tex.), affirmed, 31 F. 2d 32 (C. A. 5).

(*b*) Petitioners' claim that their sales are not in interstate commerce is largely disposed of by this Court's opinion in *Interstate Natural Gas Co.* v. *Federal Power Commission,* 331 U. S. 682. There, in rejecting a similar contention, *i. e.,* that certain sales by Interstate were not in interstate commerce, the Court said (331 U. S. at 684–685):

> The issue of this case involves the jurisdiction of the Federal Power Commission to regulate sales made in the field by petitioner to three pipe-line companies, each of which transports the gas so purchased to markets in States other than Louisiana. Gas produced from petitioner's wells flows into petitioner's system of field pipe lines, moving first into branch lines, then into trunk lines, and finally into the main trunk lines from which delivery is made to the three purchasing companies. During the course of this movement petitioner purchases gas from other producers in the field which gas is introduced into petitioner's system at designated points and is there commingled with the gas moving from petitioner's own wells. By far the larger part of the gas so purchased by petitioner has been gathered from

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use and burn it as such, is changed into something different because of the fact that after it is taken from the well it is cleaned up and processed before final delivery to the ultimate consumer. * * *

> various wells of the selling companies before delivery to petitioner is made. The gas moves through petitioner's system at well pressure. Shortly after the sales in question are completed, the gas is directed through the compressor stations of the purchasing companies and is there subjected to increased pressure in order that it may be moved to markets as far distant as Illinois. The entire movement of the gas from the wells to the purchasing companies through the compressor pumps and across the state lines is a continuous process without interruption for storage, processing or for any other purpose. All the gas sold in these transactions is destined for ultimate public consumption in States other than Louisiana.

See, also, *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 157, 163.[14]

The fact that here the gas was processed before sale and delivery to an interstate pipeline company does not operate to remove the gas or the sale from interstate commerce. The processing of the gas, by passing it through several facilities for the removal of impurities and heavier hydrocarbons without stoppage, is not a manufacturing operation (cf. *East Texas Motor Freight Lines, Inc.* v. *Frozen Food*

[14] Shell's suggestion that, under *Calvert*, its sales were not in interstate commerce (S. Pet. 14–15) is predicated on a misreading of that decision. *Calvert* involved the validity under the Commerce Clause of a state tax on sales of natural gas made to pipeline companies after the completion of production and gathering; consequently, the case presented no issue of whether the sales were "in" interstate commerce *vel non;* rather, interstate movement was accepted as a basic premise, with the ultimate problem for resolution being whether the tax had such an incidence as to burden interstate commerce unduly.

Express, 351 U. S. 49, 52–54), nor is it, whatever it be termed, an interruption of the stream of commerce. Since, as already indicated, the methane and ethane components of the gas at the processing plant outlet are the same as those which entered the plant, without change in substance, the processing of gas is undertaken only to facilitate transmission and use. As such, far from constituting an interruption of the interstate flow, it is an "essential part of the business of transporting and marketing the natural gas" (*Cities Service Gas Co.* v. *Federal Power Commission,* 155 F. 2d 694, 703 (C. A. 10), certiorari denied, 329 U. S. 773), an "incident to the over-all pipeline transmission and resale operations" (*City of Detroit, Michigan* v. *Federal Power Commission,* 230 F. 2d 810, 820 (C. A. D. C.), certiorari denied, 352 U. S. 829).[15] Moreover, since it is established that, for the purposes of federal regulation, interstate commerce is not interrupted even where there is a stoppage for processing (see *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.,* 334 U. S. 219, 238; *Parker* v. *Brown,* 317 U. S. 341; *Cloverleaf Butter Co.* v. *Patterson,* 315 U. S. 148; *Stafford* v. *Wallace,* 258, U. S.

[15] There is nothing new or unusual about the processing of natural gas. Most interstate natural gas pipeline companies process natural gas in connection with the transportation or sale thereof in interstate commerce, either for the profit involved in the extraction of by-products or to make the gas marketable and salable. For example, see *United-Fuel Gas Co.* v. *Railroad Commission,* 278 U. S. 300; *Federal Power Commission* v. *Colorado Interstate Gas Co.,* 348 U. S. 492;; and cases cited in *City of Detroit, Michigan* v. *Federal Power Commission, supra* at pp. 819, 820.

495, 514–516), it follows *a fortiori,* that where, as here, the processing does not involve any stoppage, the interstate movement is not interrupted.

(*c*) Finally, there is no substance to petitioners' claim that their sales are for manufacture, not for resale. Apart from the facts already mentioned—that there is no "manufacturing" involved in processing and that the processing itself is an integral part of the interstate transmission—it is clear that, notwithstanding the formulation of purposes set out in the contracts, petitioners' sales were made for the purposes of resale. The operators of the processing plants to which petitioners sold the gas were in the business of selling the salable products resulting from the processing; and the contracts themselves contemplated resale, as is evident from the fact that prices which petitioners received for their gas from the processing plant operators were in most instances tied to the proceeds which the latter received from their resales. See *supra,* pp. 5, 6-8. Thus, if the gas and the other materials separated from the gas in processing were not in fact resold, petitioners in many instances would receive little, if anything, for their efforts.[16]

CONCLUSION

For the foregoing reasons, it is submitted that these petitions for writs of certiorari should be denied.

[16] It is immaterial that the contracts did not in express terms provide for resale; "an express agreement or an intention on the Company's part that the energy shall be resold is [not] required in order to confer jurisdiction." *California Electric Power Co.* v. *Federal Power Commission,* 199 F. 2d 206, 209 (C. A. 9), certiorari denied, 345 U. S. 934.

However, we note the pendency of *Cities Service Gas Company* v. *State Corporation Commission of Kansas*, No. 85, which we believe should be reversed.

Respectfully submitted.

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